Despite its obligations to provide conversions, Verizon continues to follow a two-pronged strategy that is designed to protect the monopoly profits derived from special access. On the one hand, it has sought to foreclose virtually any service conversions. On the other hand, failing an outright prohibition, it has imposed qualification provisions that rarely can be met and is seeking to impose an ordering process that is so costly and prone to potential customer disruption that it carriers have prohibitive costs for service conversions and risk customer dissatisfaction, effectively eliminating the benefits of the conversion potential.

AT&T is willing to work within the constructs of the existing conversion process dictated by Verizon, in its Verizon-North and Verizon-South Guidelines for Converting Special Access Services to Loop-Transport Combinations, and the similar process employed in New York. However, some modifications are required and certainly this accommodation does not eliminate the need for appropriately detailed interconnection agreement language clarifying the rights, responsibilities and obligations of the parties for provisioning these conversions.

Q. WHAT IS AT&T'S BASIC OBJECTION TO THE PROCESS DESCRIBED IN THE VERIZON GUIDELINES AND EMPLOYED IN NEW YORK?

A. AT&T objects to Verizon's unilateral imposition of interconnection agreement language as a pre-requisite for implementing a conversion required by the law. Rather than submit the issue of Special Access conversion to this process, Verizon seeks to have AT&T abdicate its right to negotiation, and ultimately arbitration, and instead accept its own, one-sided amendment. Verizon uses delay tactics to its favor, *i.e.,* if AT&T does not accept its terms, it is forced to enter into lengthy negotiation and litigation as it did here. However, as noted above, it is both appropriate and in the interest of efficiency for both parties and the Commission to resolve this operational issue now.

Q. WHAT OTHER PROVISIONS ARE NECESSARY SO THAT VERIZON'S ABILITY TO DELAY OR BLOCK SPECIAL ACCESS CONVERSIONS IS MINIMIZED?

A. The billing change associated with the conversion should become effective on the date that all required information is submitted. In the vast majority of cases, no physical work should be required. In the rare case where AT&T requests a conversion requiring physical work, AT&T's proposed language provides for pro-ration of the changes based upon the earlier of when Verizon committed to complete the work, or when the work was actually completed.

This section provides incentive to Verizon to meet its deadlines and does not impose any additional penalties for missing its commitment. As discussed previously (*see* Subissue III.7.A), Verizon provides no realistic examples of when a legitimate need to disconnect elements might occur. Tying the date of billing change to any other date or consideration simply opens the conversion process to "games playing" where Verizon has every incentive to delay.

Verizon claims AT&T's language "defies commercial reality" and that it "ignores the reality of the time to process orders."[35] It is incredible that Verizon raises this defense. When responding to discovery regarding its procedures for converting of special access to UNE combinations, Verizon responded: "[s]ee Verizon's Conversion Guidelines for Verizon's process, ***which does not require***

35 *Id.* at 92 Issue 180.

that CLECs submit orders."[36] Verizon cannot have it both ways–claiming the effective date of a billing change must be closely coordinated with processing of the CLEC's order, while at the same time claiming that the CLEC does not need to submit an order for the conversion.

The effective date of the billing change is the real issue here. Disregarding that the Verizon process apparently does not require an order, the actual completion date of the order does not, by necessity, impact the date upon which a billing change occurs. Verizon can not credibly claim that billing changes are inextricably linked to order completion dates when it routinely defers working customer disconnect orders on their due date (as a workload management tool) but nevertheless renders billing based on the scheduled completion date of the order.[37] Furthermore, it is difficult to comprehend how a billing change can be tied to the completion date of a non-existent order. Thus, the Verizon reliance upon the fact that "it takes time to process orders" has no relevancy.

The possibility that the order may be changed, cancelled or supplemented carries no weight, particularly given that no order is purportedly required. The only reason a change or supplement might occur, should an order be required, is when physical work was requested. When physical work is involved and an order supplement is submitted, the committed due date changes. If physical work is completed, the order supplement is rejected. The only reason apparent for the

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36 Verizon Response to AT&T Data Request 3-18. (Emphasis added.)

37 Providing customers with credit towards their bills is frequently encountered, notwithstanding the actual "service date." For example, Internet service providers or

cancellation would be termination of the combination, which renders moot the billing change altogether.

Finally, in response to AT&T DR 3-20, Verizon states it "gives an effective bill date for special access conversions of 30 calendar days of less.[38] If the conversion is not technically completed during that time, the pricing is applied retroactively to the effective bill date." This commitment, while inadequate, also argues against Verizon's assertion that there is an unbreakable linkage between order completions and effective dates of billing changes. Nevertheless, the specific commitment is inadequate because the start of the 30-day period is less than clear, and upon examination of the Verizon conversion procedures, is not tied to the initial submission of the conversion request. Furthermore, before taking advantage of Verizon's self-characterized "no order" process where the 30-day commitment is offered, the CLEC must first agree to an amendment to its interconnection agreement. This Verizon-drafted amendment grants Verizon the *sole* authority to interpret the law and the ability to independently establish CLEC requirements for taking advantage of any beneficial changes.

Assuming that the amendment of the interconnection agreement does not deter CLECs, Verizon's guidelines provide for the effective bill date to be determined by the completion of four steps of a five-step process.[39] Although the

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cable providers often "give away" service for several months as an incentive to customers.

38 Verizon Response to AT&T Data Request 3-20.

39 *See* "Verizon-North and Verizon-South Guidelines for Converting Special Access Services to Loop-Transport Combinations". Version 1.1. (rel. April 2001), at 2-5. The

guidelines call for the process time frame to be negotiated by the parties, they hardly provide for a date certain and most certainly do not allow a CLEC to have much control over that date.

Q. SHOULD CONCERNS REGARDING PERFORMANCE MEASUREMENTS IMPACT SERVICE CONVERSIONS?

A. No. There simply is no justification for the tying of performance service measurements to service conversions. Verizon relies upon vague concerns that the order might be supplemented, or that somehow performance measurements are affected, to resist acceptance of AT&T's proposed language relating to service conversions.

Likewise, the possible linkage between institution of a billing change and performance metrics is totally devoid of merit. Verizon has instituted many "exceptions" to the business rules applicable to performance metrics when the exception served its purposes. Here, to the extent there is any basis to the Verizon claim, (which AT&T sincerely doubts), an exception could be proposed for the performance measurement affected rather than seeking to indefinitely delay charge reductions. In any event, the relationship to performance metrics, if any, is insufficient justification for holding billing changes hostage to Verizon's delay.

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first step of the Verizon conversion process (which Verizon titles "preorder negotiation") requires a CLEC to certify that it is providing a significant amount of local exchange service over the facilities to be converted, agree to amend its ICA with Verizon supplied language, and also requires a CLEC to agree to pay any applicable termination liabilities. Subsequently, a CLEC is required to submit detailed circuit data for each special access circuit which is the subject of the conversion request. Once that data has been submitted, Verizon and the CLEC are expected to jointly verify and reconcile that data against Verizon's records. Once that data has been reconciled, Verizon will calculate the amount of special access charges that will be credited to the CLEC, as well as the new charges that will apply for the applicable loop-transport combinations.

SUB-ISSUE III.7.C	Should AT&T be bound by termination liability provisions in Verizon's contracts or tariffs if it converts a service purchased pursuant to such contract or tariff to UNEs or UNE Combinations?

Q. PLEASE DESCRIBE TERMINATION LIABILITY AND ITS APPLICABILITY TO SERVICE CONVERSION FROM SPECIAL ACCESS TO UNES.

A. Termination liability is a fee proposed by Verizon based on the premise that the customer terminates the service ordered under a term and/or volume commitment. But by converting from special access services to UNE combinations, AT&T is not terminating the service. Conversions to combinations of UNEs do not involve any physical changes to the underlying facilities of a service. The same facilities are still being used to provide the same services to the same customers. As the ILECs themselves have recognized, conversion orders are nothing more than a billing change.[40] The AT&T purchases are simply more closely aligned to the appropriate costs it should have been paying all these past years.[41]

Q. SHOULD TERMINATION LIABILITY PROVISIONS IN VERIZON'S CONTRACT OR TARIFF APPLY IF A SERVICE PURCHASED PURSUANT TO SUCH CONTRACT OR TARIFF IS CONVERTED TO UNES OR UNE COMBINATIONS?

A. No. AT&T purchased many of the special access services that it seeks to convert to UNE combinations under duress after the passage of the 1996 Act, because that was the only option then available. Despite the passage of the Act, Verizon

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40 "Generally circuit flipping entails nothing more than a billing change." Qwest Comments dated April 5, 2001 in Docket CC 96-98, at ii.

41 In its ICA arbitration with BellSouth Telecommunications, the South Carolina Public Service Commission found that because the "loop/transport combination sought by AT&T would continue to serve the same purpose, have the same features, perform the

refused to sell UNE combinations for AT&T services such as AT&T Digital Link ("ADL") whose lines combined local and long distance traffic. Thus, AT&T was faced with the Hobson's choice to either forego the business and cease serving customers, or pay Verizon's inflated special access charges. AT&T chose the latter. In contrast to UNEs, which are at least arguably cost-based, special access is priced considerably above any reasonable approximation of cost.[42] Therefore AT&T has been over-paying for the services—and Verizon has been receiving an unjustified windfall—for many years.

Despite the passage of the 1996 Act, the practice of using special access circuits to provision local as well as long distance service continued for many reasons. First, many ILECs did not establish TELRIC cost-based prices for these types of facilities. In such cases, CLECs had (and sometimes still have) no choice but to acquire the equivalent necessary functionality through the more expensive option of special access. Moreover, the process of ordering and provisioning UNEs was (and often still is) far more cumbersome and costly than the process for special access, for many reasons: the state of OSS interfaces and other operational issues, difficulty in obtaining collocation space, disputes over the ability to obtain high capacity facilities as unbundled elements, and lack of ILEC cooperation.[43]

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same functions, and service the exact same customer[s]" AT&T should not be subject to termination penalties for UNE conversions.

42 AT&T Comments dated April 5, 2001 in Docket CC 96-98, at 14-16.

43 AT&T Comments dated April 5, 2001 in Docket CC 96-98, Carroll/Rhodes Affidavit at 3-4.

The term plans under which AT&T contracted for many of the special access services sought to be converted are essentially contracts of adhesion, because AT&T had no real choice in the matter. Verizon should not be rewarded for its own intransigence. Consequently, AT&T should not be held to the termination liabilities that Verizon has unilaterally imposed by tariff or contract. This is the minimum remedy that AT&T should receive considering years of being overcharged by Verizon for special access and the costs of litigating this issue.

Q. AGAINST THIS HISTORY, IS THERE ANY BASIS FOR CONSIDERING VERIZON'S PROPOSED TERMINATION LIABILITIES "APPROPRIATE?"

A. No. The Commission, in the *UNE Remand Order*, states that "any substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties under volume or term contracts."[44] The question of course is: what constitutes "appropriate" termination penalties. In this case, the Commission should consider equity of treatment compared to retail customers and wholesale customers, and by whether or not the carrier seeking the conversion could have practically employed the UNE combination at the time the configuration was initially established. Verizon apparently agrees that an "appropriateness" standard is applicable.[45]

44 *UNE Remand Order* at footnote 985.

45 *See* Verizon Response to Unresolved Issues, Issue III-7, at 80, referring to *UNE Remand Order* footnote 985.

Q. HOW DOES VERIZON JUSTIFY ITS INTENT TO APPLY TERMINATION LIABILITIES?

A. Verizon's arguments for applying termination liabilities are: (1) that the contract requires that they be applied; (2) that Verizon must treat AT&T in the same manner as it treats any other customer;[46] and (3) that Verizon must be made whole.[47]

Q. DO THE PROVISIONS OF THE CONTRACT REQUIRE THAT VERIZON APPLY TERMINATION LIABILITIES?

A. No. Verizon is simply stating that it won't waive the charge. My understanding of contracts is that when two parties agree, then any provision of a contract may be modified.

Q. DOES VERIZON'S TREATMENT OF OTHER CUSTOMERS VALIDATE THAT ITS PROPOSED APPLICATION OF TERMINATION LIABILITIES IS "APPROPRIATE"?

A. No. With respect to treatment of other customers, AT&T sought to gain insights on how Verizon treated it *retail* customers subject to contractual arrangements. In its initial response, Verizon focused only on the narrow situation of special access.[48] Yet, even in this highly limited response, Verizon provides insight that, where non-CLEC/IXC "contracts" are involved, it is more liberal with its treatment of termination penalties and modifying pricing.

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46 *See* Verizon Reply to AT&T Issue 182, at 94.

47 *See* Verizon Reply dated May 31, 2001, to AT&T Issue III-7, at 83.

48 *See* Verizon Reply to AT&T DR 3-7.

For example, Verizon states that "a request to convert the existing discount plan to a longer commitment period will nullify termination liability."[49] It also admits that "[t]ermination liability does not apply if the customer requests to upgrade service to a higher capacity…so long as the new service is purchased under a long-term agreement of equal or greater length."[50] Further, Verizon states that "[i]n the event that Verizon initiates a rate increase that affects price of a service by 8% or more, customers may cancel their pricing plan for the affected service without termination liability."[51] It admits that "[t]ermination liability is not applicable if Verizon initiates a rate decrease for service purchased pursuant to a discount pricing plan."[52]

Q. ARE THERE INSTANCES WHERE VERIZON WILL RENEGOTIATE ITS CONTRACTUAL TERMINATION LIABILITIES WITH RETAIL CUSTOMERS?

A. Yes. Although Verizon refuses to renegotiate termination liabilities with AT&T where AT&T seeks to replace special access services with UNE combinations,[53] this is clearly not consistent with the way Verizon treats its retail customers. In Verizon's Supplemental Responses to AT&T's interrogatories, Verizon admits

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49 Verizon Response to AT&T DR 3-7(D)(ii).

50 *Id.*

51 Verizon Response to AT&T DR 3-7(E).

52 Verizon Response to AT&T Data Request 3-7(E)(ii).

53 Indeed, a prerequisite of the Verizon conversion process seems to be that a CLEC must abdicate its rights to challenge termination liabilities in order to convert special access facilities to loop-transport combinations throughout Verizon's territory. For example, step one (subsection c) of Verizon's conversion process states that "all applicable termination liabilities and minimum-period penalties will apply pursuant to the tariff terms and conditions for early termination of services." *See* "Verizon-North and

that there are several different circumstances in which Verizon will renegotiate its term agreements with retail customers. For example Verizon admits that its contracts with its retail customers may include clauses that permit a customer to reduce its volume commitments because the customer (1) purchases new or replacement services from Verizon for purposes of optimizing its network; (2) suffers a business downturn that renders it unable to satisfy its volume or term commitments; and (3) offers a competing quote for the services from a Verizon competitor.[54]

It is, thus, clear that Verizon's refusal to renegotiate the terms of the special access tariff volume and term commitments, as AT&T asks, is inconsistent with the ways that it treats its retail customers. Verizon's defense that it needs to treat customers equally is precisely the argument that justifies AT&T's requested relief. AT&T seeks to be treated in the same manner as many other customers of Verizon. The fact that Verizon permits a customer to renegotiate the terms of a contract when the customer's existing arrangement with Verizon is no longer equitable to the customer because of changed circumstances, such as the availability of a more efficient network configuration, or a business downturn, or a better offer from another carrier, has direct parallel to the situation at issue here. There can be no question that the current forced use of special access at non-TELRIC rates, to serve customers that AT&T is entitled to serve using UNE combinations priced at some approximation of TELRIC, is not

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Verizon-South Guidelines for Converting Special Access Services to Loop-Transport Combinations" Version 1.1. (rel. April 2001), at 3.

equitable to AT&T. Essentially, all AT&T is attempting to do is optimize its network, no less than any other Verizon customer that finds a better or less expensive way to obtain the same functionality. If, indeed, AT&T were to be treated like Verizon's other customers, then the termination liabilities should not be enforced.

Q. DOES VERIZON'S DESIRE TO BE MADE "WHOLE" JUSTIFY TERMINATION LIABILITIES AS "APPROPRIATE"?

A. No. Verizon is not entitled to "be made whole" for service conversions. Verizon argues "[t]he tariffed termination charges are designed to make Verizon whole if the services are canceled prematurely, as happens when a carrier asks to replace them with network elements."[55] But no services are prematurely cancelled. By the very nature of the conversion (in most cases with no physical work) the very same plant and equipment continues to be used and Verizon is fully compensated for the costs incurred for use of the plant and equipment. Ironically, if Verizon had permitted AT&T to purchase the services now available after much litigation, there would be no termination, or any potential imposition of termination liability. Indeed, it is only Verizon's foot-dragging in converting special access to UNE combinations that has given rise to the potential application of termination charges.

What Verizon is actually contending is that, because of its monopoly in access services, it is entitled to continue to extort supra-competitive rates from customers – or in the terms used by Verizon, to be "made whole." Verizon claims

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54 Verizon Supplemental Reply to AT&T Data Request 3-7.

the phrase "made whole" means "Verizon recovers and the customer pays an appropriate amount for service provided during the commitment period."[56] Given that EELs are priced at TELRIC, payments designed to compensate Verizon for profits earned is excess of TELRIC cannot be portrayed as "an appropriate amount for service." Thus, any termination liability designed to recover monopoly profits must be considered patently inappropriate. Because Verizon is "made whole" in every reasonable meaning of the phrase and because the very same plant and equipment continue to be used and because the waiver of termination liabilities is consistent with how Verizon treats other customers, it should not receive any termination payments when AT&T converts special acces to UNEs.

ISSUE III.9	In what circumstances can Verizon assert the "end user with four or more lines" exception to deny providing AT&T the local switching unbundled network element?

Q. IS AT&T ASKING THE COMMISSION TO REVISIT THE "FOUR OR MORE LINE" UNBUNDLED SWITCHING EXCEPTION IN THIS ARBITRATION?

A. No. Contrary to Verizon's allegations in its Motion to Dismiss, AT&T is not asking the Commission to overturn the exception in this proceeding. AT&T recognizes that the ULS exception is the subject of a separate Commission proceeding. Here, AT&T is asking only that language be included in the agreement (1) expressly defining how the exception is to be applied and (2) specifically identifying what actions will occur if and when it is modified.

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55 *See* Verizon Reply dated May 31, 2001, to AT&T Issue III-7, at 83.

Q. WHY DOES THE INTERCONNECTION AGREEMENT NEED TO ADDRESS HOW THE EXCEPTION IS APPLIED?

A. Because Verizon is misinterpreting the Commission's rules in ways that severely retard, if not destroy altogether, AT&T's ability to utilize unbundled switching to serve any customers who happen to have multiple, one or two line locations. In Verizon's view, if a business enterprise had, for example, 50 two-line locations scattered throughout Virginia (imagine a chain of convenience stores), then, Verizon would argue, no CLEC could use unbundled switching to serve any of them, even though each of them is under the limits in the Commission's rules.

That is not how the Commission intends for the rule to apply. The correct reading of the rule is that the limitation applies when a customer has four or more lines at a single geographic location. That is the approach reflected in AT&T's language.

Q. WHY ELSE IS AT&T ASKING THE COMMISSION TO DEFINE THE "FOUR OR MORE LINE" EXCEPTION HERE?

A. Verizon is also proposing to put inappropriate limits on AT&T's ability to use Enhanced Extended Loops ("EELs") to serve its customers. As the Commission well knows, Verizon is not allowed to impose limits on unbundled switching unless it offers EELs which CLECs can use to connect customers to its switches. As explained below, Verizon appears unwilling to offer EELs because, in its view, it will only offer the arrangement if the loop and transport facilities are "currently combined." In other words, it will not create new loop-and-transport EEL combinations where none already exist. That view, of course, is the

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[56] Verizon Response to AT&T Data Request 3-9.

equivalent of saying that EELs are not available because very few, if any, loop-and-transport combinations are in place today.

Q. WHY SHOULD THE INTERCONNECTION AGREEMENT CONTAIN LANGUAGE DEALING WITH THE POSSIBILITY THAT THE ULS RESTRICTIONS WILL BE REVISED OR REMOVED?

A. AT&T and other CLECs should not be forced to re-litigate, renegotiate or arbitrate the ULS exception if and when the Commission rightfully decides that the ULS exception should be lifted or modified. Absent specific provisions, Verizon will have no incentive to implement the change expeditiously, meaning that AT&T might be forced to wait months.

That is why AT&T proposes language in § 11.4.1.5.1 providing that the exception becomes null and void immediately upon the effectiveness of a Commission rule or order mandating a change or elimination of the ULS exception. The specific interconnection agreement language AT&T recommends appears at Attachment 1.

Q. WHAT ARE THE OPERATIONAL CONSIDERATIONS RELATED TO THE IMPLEMENTATION OF THE CURRENT ULS EXCEPTION THAT NEED TO BE RESOLVED IN THIS ARBITRATION?

A. The critical issues that require resolution are as follows:

- Verizon omits the definition of the "end user" and "exempt end user" making it impossible to undertand exactly how Verizon proposes to implement the exemption. In any event, Verizon's reliance on the identification of the "end user" as a primary determinant of the ULS exception is misplaced;[57]

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57 *See* Verizon Response to AT&T Issues List, Issue 84 and Verizon Response to Unresolved Issues, Issue III-9.

- Verizon's application of the 4-line limit using an aggregated count of lines across all locations of a customer, rather than on a location-by-location basis, deprives small businesses of a choice of competitive services;
- Although Verizon's wording of the line limitation in terms of 4 DS0 equivalents or lines is accurate as far as it goes, it needs to be clarified to prevent abuses of the provision;
- Verizon needs to provide AT&T with advance notice of its intent to exercise ULS limitations;
- Verizon fails to define the geographic territory within which the exemption may be applied. The *UNE Remand Order* unambiguously specifies that the ULS limitation may be applied only in density zone 1 offices (existing as of 1/1/99) in the top 50 MSAs where Verizon is an incumbent LEC;[58]
- Verizon fails to address its obligation to make EELs available in all areas when it applies the ULS limiting provisions[59]

The Commission can readily resolve these issues by adopting AT&T's proposed language. *See,* Attachment 2 of this testimony.

Q. HOW DOES VERIZON USE ITS DEFINITION OF "END-USER" TO TRY TO THWART THE INTENT OF THE COMMISSION'S RULES?

A. In Verizon's view, if an "end-user" has more than four locations, no matter how geographically dispersed, then a CLEC may not serve that customer using unbundled switching. Its position is that "for purposes of Rule 51.319(c)(2), 'end user' means customer – regardless of how many locations a given customer may

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58 *UNE Remand Order* at ¶ 285.

59 *UNE Remand Order* at ¶ 288.

have."[60] Consistent with that view, its tariff defines an "end-user" as a "business entity and all of its branches, locations and subsidiaries, or a group of end-users purchasing shared tenant services as a group or a group of coin/public lines owned by the same business entity."[61] It then points to that definition to argue that it is not obligated to provide ULS when AT&T "serve end-users with four (4) or more voice grade (DS0) equivalents or lines ('Exempt End User(s)') provided that Verizon complies with the requirement of 47 CFR §51.319(c)(2)."[62] Thus, under Verizon's view, if an "end-user" has four separate single-line locations spread across, say, Arlington and Fairfax Counties (for example, a chain of dry cleaners), no CLEC could serve those locations with a configuration using unbundled switching.

That is not the intent of the Commission' rule. Under the rule, the Commission is focused on whether the customer has four lines at a single location. Thus, the customer's location(s), not its identity, is the primary consideration in the application of the 4-line exception.

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60 Verizon Reply to AT&T DR 3-23. Further, Verizon's reference that its retail tariffs "recognize that individual customers can have multiple locations" does not help its case. A "single customer" and an "end user" are not analogous, as Verizon states in its response here, because in this context a "single customer" can be an aggregation of several distinct "end users" at different locations.

61 Responses of Verizon Virginia, Inc To The Issues List Filed By AT&T Communications of Virginia, Inc., et al., Virginia State Corporation Commission Case No. PUC000282, Attachment A at 118.

62 *See* Verizon proposed § 11.4.1.5.1 (Draft) Interconnection Agreement attached to AT&T Petition dated April 23, 2001, at 87.

Q. HAS VERIZON SHOWN THAT ITS BILLING SYSTEMS CAN ACCOMMODATE ITS APPROACH TO THE FOUR LINE EXCEPTION?

A. No. Verizon has made no showing that its billing systems can accurately implement Verizon's interpretation of "end user." In response to AT&T's Data Request 3-23 asking for any documentation as to the accuracy of Verizon's systems in this regard, Verizon avoided answering the question and stated only that " Verizon Virginia's billing system tracks customer numbers at multiple locations for summary billing purposes. However, the billing system does not seek to identify each physical service location belonging to a single retail customer."

Q. WOULD VERIZON'S APPROACH TO THE FOUR LINE LIMIT IMPEDE THE DEVELOPMENT OF COMPETITITON?

A. Yes. Verizon's interpretation of the ULS limitation has serious adverse implications for the development of competition. For example, a pizza chain might have 40 two-line locations within Virginia. Verizon would claim that this is an 80-line customer which no CLEC could serve using ULS, even if the 40 locations were in 40 different towns and cities. This would curtail, if not eliminate, competitive options for that customers, because it would uneconomic for a CLEC to connect any of those 40 locations to the CLEC's own switch. Likewise, if a consumer had 2 lines at his/her home in Richmond and two in service at his/her beach home in Virginia Beach, under the Verizon interpretation of the rule the customer would not qualify to be served by a CLEC employing UNE-P.

Q. HOW DOES VERIZON'S INTERPRETATION OF THE 4-LINE EXCEPTION ADDRESS SITUATIONS WHERE A CUSTOMER'S LOCATIONS ARE BOTH WITHIN AND WITHOUT DENSITY ZONE 1 OR A TOP 50 MSA?

A. It is not at all clear how Verizon interprets the rule, but it appears it would count locations statewide, irrespective of whether some of them were outside the Zone 1/Top 50 MSA limit. Verizon admits as much in its response to AT&T DR 3-23, when it says that its billing system "does not seek to identify each physical service location belonging to a single retail customer."

This further illustrates the importance of applying the rule "per location" rather than "per customer." If the focus is by location, it becomes a simple matter to determine whether or not the location is served from a density zone 1 office in a top 50 MSA. Therefore, the Commission should clarify that aggregating lines across all locations of a customer is not a correct interpretation of its intent.[63]

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63 The commissions in Florida and Georgia have already reached the wrong conclusion on this issue. The Florida Commission begins well enough, finding that "the FCC's intent was to have the rule apply on the 'per-location-within the MSA' basis that AT&T supported." *In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252*, Docket No. 000731-Tp, Order No. PSC-01-1402-Fof-Tp (June 28, 2001) at 60. But it then inexplicably rules that "Bell South will be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA, to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer." *Id.* The Georgia Commission ruled the same. *In Re: Petition of AT&T Communications of the Southern States, Inc. and Teleport Communications Atlanta, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 11853-U, Document No. 46713 (April 24, 2001) at 8.

Q. DOES THE *UNE REMAND ORDER* SUPPORT VERIZON'S ATTEMPT TO TURN A NARROWLY FOCUSED EXCEPTION INTO A COMPLEX RULE THAT LIMITS CLECS' ABILITY TO SERVE MANY CUSTOMER LOCATIONS?

A. No. The Commission sought "to adopt a rule that serves as a reasonable proxy for when competitors are indeed impaired in their ability to provide services they seek to offer."[64] Critically, the restrictions it described appropriately first narrowed the geography to the localities where competitive switches were most likely to exist. The Commission did not rely upon customer identity. A rule primarily based upon a non-standard parameter such as a "customer" or end user," as Verizon would have it, does not comport with the basic "impairment" analysis that the Commission conducted in crafting the current rule.

A rule that considers all customer demand across the state does not reflect the impairment that a CLEC would encounter to establish the necessary collocation and backhaul, (or in the alternative the EEL arrangements), nor the impairment of the need to coordinate hot cuts, that can be prohibitively expensive for small volumes of loops.

The Commission's own discussion indicates that locality, not customer identity, is the primary consideration of the limitation: "we now consider whether, within these geographic areas, market facts demonstrate that requesting carriers are not impaired without access to local circuit switching for discrete market segments or customer classes."[65] Impairment is indisputable if the CLECs do not

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64 *UNE Remand Order* at ¶ 276.

65 *Id.* at ¶ 290.

have switches in the vicinity of the customers they seek to serve. In short, Verizon's interpretation of the rule is just plain wrong.

Indeed, a reasonable reading of the Commission's order bears that out. The Commission's rationale for applying the ULS limitation to the top 50 MSAs was premised on its belief that "nearly all the top 50 MSAs contain a significant number of competitive switches"[66] and that "density zone 1 closely reflects the wire centers where competitive LEC switches are located."[67] The Commission noted that "the revenue potential of serving less dense markets outside the top 50 MSAs is unlikely to outweigh the costs of collocating in these markets."[68]

Q. HOW DOES THE COMMISSION'S DECISION THAT AN ILEC CANNOT IMPOSE THE 4-LINE EXCEPTION ON CLECS UNLESS IT FIRST OFFERS THEM ENHANCED EXTENDED LOOPS ("EELS") FURTHER SUPPORT AT&T'S INTERPRETATION OF THE CURRENT RULE?

A. The Commission only allowed the incumbents to restrict the availability of local switching in those areas where some CLECs have been able to deploy their own switching and, to the point here, the incumbents were willing to provide EELs to enable the CLECs to connect customers to the CLECs' switches. As the Commission noted, "[t]he EEL allows requesting carriers to serve a customer by extending a customer's loop from the end office serving the customer to a different end office in which the competitor is already collocated."[69] In

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66 *Id.* at ¶ 281.

67 *Id.* at ¶ 285.

68 *Id.* at ¶ 283.

69 *Id.* at ¶ 288.

discussing the EELs interplay with its ULS restriction, the Commission explicitly states:

> "If the EEL is available and a requesting carrier seeks to serve a high volume business, the incumbent LEC can provision the high capacity loop and connect directly to a requesting carrier's collocation cage."[70]

AT&T has shown that today's technology requires at least 19 to 20 2-wire loops to a single customer location to justify the use of a high capacity loop at a single location (as opposed to single loops scattered across multiple locations).[71] A customer using that quantity of loops at a single location would likely be a medium to large sized business. On the other hand, a CLEC cannot efficiently use an EEL to serve a large number of small locations or a small subset of lines at a single large customer location, or even a single modest sized customer at a large MTE.

Thus, the secondary consideration of the ULS limitation must be the number of lines a CLEC serves for a single customer at a single location in order that the ULS limit has a reasonable relationship between the impairment (*i.e.*, the ability to physically serve the customer) and the revenue potential of serving the customer.

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70 *Id.* at ¶ 298.

71 AT&T ex Parte dated October 11, 2000, in CC Docket No. 96-98.

Q. IS VERIZON WILLING TO PROVIDE EELS IN COMPLIANCE WITH THE COMMISSION'S RULES?

A. No. Verizon states that "[f]or EELs, service that is considered combined is loop transport combination already combined at a particular location. (EELs that are already combined are offered subject to the FCC's use restrictions.)"[72]

This does not comply with the Commission's rules. The Commission has directed that EELs be provided in any instance where Verizon chooses to exercise its prerogative to take advantage of the ULS limitation. This is so whether or not the EELs are associated with currently combined UNEs – as interpreted by Verizon — or not. There is nothing in the Commission's rule that allows Verizon to restrict the availability of the EEL combination only to those instances where the UNEs are "currently combine[d]." Indeed, such an interpretation of the Commission's rules would not only be contrary to the Commission's rule, but also to the fundamental intent of that rule, as explained above.

Q. PLEASE EXPLAIN WHY THE INTERCONNECTION AGREEMENT SHOULD CLARIFY THAT THE 4-LINE EXCEPTION APPLIES TO 2-WIRE LOOPS RATHER THAN TO 4 OR MORE DS0s.

A. Without clarification that the line limitation is to be determined based on the quantity of 2-wire loops as opposed to the number of DS0s, the ULS exception will be the subject of continued dispute and competitive abuse. The only loops that can employ the ULS element are 2-wire loops. Allowing Verizon's DS0 provision to stand without clarification invites unintended competitive abuses.

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72 Verizon Reply to AT&T Data Request 3-4.

The DS0 provision can be interpreted to include dial-up analog modem based data applications such as low speed Internet access. However, the provision could equally be used to deny the ability of CLECs to engage in line splitting where the low frequency spectrum is one DS0 while the high frequency spectrum supports data transfer rates well in excess of 192 kbps or 3 DS0s. Furthermore, even if the CLEC were employing the 2-wire loop to support derived voice services (rather than or in addition to high speed internet access), the derived voice could not be delivered to the ILEC circuit switch. In order to interface derived voice with a circuit switch (rather than transporting in a packet format) the CLEC would require equipment to both convert the derived voice into an uncompressed format make the transmission compatible with a time division multiplexed transmission facility. The cost of deploying such equipment at each ILEC switch would largely defeat the value of the derived voice technology. The Commission should therefore make it unambiguous that the ULS limitation pertains solely to 2-wire physical loops that can be used and are practical to connect to the ILEC circuit switch.

Q. PLEASE EXPLAIN WHY VERIZON MUST BE REQUIRED TO GIVE ADVANCE NOTICE BEFORE IT IMPOSES THE 4-LINE ULS EXEMPTION ON AT&T.

A. The Commission recognized that CLECs require a stable business operating environment in order to attract investment capital.[73] Yet with respect to ULS, Verizon, under its proposed language, would be able to change the entire

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73 *UNE Remand Order* at ¶¶ 9, 105, 114, and 150.

economics of prospective market entry as well as change the cost structure for the embedded base of customers already served by the CLEC with no notice whatsoever.

Pricing of critical UNEs must not be revised without reasonable advanced notice. Likewise, non-TELRIC pricing must not be applied to the existing base of customers (or those UNEs ordered before the effective date of the exemption) until the prices would otherwise be subject to change (in other words, when the interconnection agreement is re-negotiated). Such advance notice provisions and a prohibition on changes to pricing for the infrastructure of existing customers must be made explicit.

Q. PLEASE EXPLAIN THE NEED FOR GREATER CLARITY AND SPECIFICITY OF LANGUAGE IN THE INTERCONNECTION AGREEMENT WITH RESPECT TO THE AVAILABILITY OF EELS.

A. Although compliance may be intended by Verizon by its reference to the provisions of § 51.319(c)(2) of the Commission's Rules, the obligation to make EELs available on an unrestricted basis throughout the density zone 1 offices in the top 50 MSAs should also be made explicit, as should the list of the precise offices where Verizon intends to impose the ULS exemption on CLECs. The EELs availability obligation is clearly spelled out within the referenced language of the Commission's Rules. Because Verizon need not exercise its option to exempt ULS from TELRIC pricing in all density zone 1 offices in the top 50 MSA under the Commission's existing Rules, it should be obligated to establish precisely where the exemption will be applied. AT&T's proposed language does just that.